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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

TANYA M. CASTANEDA,

Plaintiff and Respondent,

v.

SABAH ABRO et al.

Defendants and Appellants.

D051689

(Super. Ct. No. GIS22409)

APPEAL from a judgment of the Superior Court of San Diego County, William S. Cannon, Judge. Affirmed.

Sabah Abro and his son, Nowar Abro (together Defendants), appeal from a judgment in favor of Tanya M. Castaneda following a bench trial in this breach of contract action. Defendants assert that the judgment must be reversed because the trial court failed to issue a written statement of decision and the evidence does not support the damage award. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Castaneda and her family owned and operated a successful catering and banquet hall business located in Chula Vista, California called the Java Café. If Java Café was not available for a potential client, Castaneda would rent another banquet hall and provide the services for the client. Defendants, through Ninas Bonitas, LLC (Ninas), owned two commercial buildings, one located near the Java Café called the Roman Village and the other in National City, California called the Roman Palace.

In early 2005, Nowar contacted Castaneda to learn more about the banquet business because the Roman Village, a restaurant he operated with his family, was losing money. Castaneda later met with Sabah; he suggested working together and asked her to come up with a percentage that she would charge to provide various items such as catering, linens and wait staff.

Castaneda proposed that she receive a total of 45 percent for each event conducted at Defendants' locations, consisting of 15 percent for food and 10 percent each for her services, wait staff, and linens/decorations, all calculated based on the total event price, minus any sales tax. Castaneda's services included booking the events and being present for each event (generally six hours) to ensure that things went smoothly. Sabah liked the idea and agreed to it. Initially, Castaneda only booked events for Roman Village, but then starting booking events for Roman Palace as well. Clients would pay Castaneda for an event and she would turn the money over to Defendants. Defendants would then pay Castaneda her percentage via cash or check.

In June 2005, Castaneda noticed that Defendants were not paying her the full amount owed. When she brought the matter to Sabah's attention, he indicated that he had used the money to remodel another building and to purchase supplies for the halls. (All dates are in 2005 unless otherwise indicated.) On September 3, Castaneda stopped working for Defendants and provided nothing to them after that date. The following month, Castaneda filed this action against Defendants and Ninas, alleging causes of action for breach of contract, breach of fiduciary duty, fraud, common count, conversion, and seeking an accounting.

The matter proceeded to trial, with Castaneda presenting copies of written contracts and seeking damages in three categories: (1) events she worked on, but was not paid for; (2) events she booked that took place after she left; and (3) future bookings. During trial, the court rejected Castaneda's contention that she was entitled to damages based on future bookings. After presentation of the evidence, Defendants and Ninas moved for nonsuit. The trial court granted the motion as to all claims against Ninas and the claims against Defendants for breach of fiduciary duty, fraud and for an accounting.

The trial court gave a verbal decision, initially noting that Castaneda was a credible witness and that Nowar lacked credibility. It concluded that the parties reached an understanding that Castaneda would be paid based on the following format: 10 percent each for services rendered, waiters and décor and 15 percent for food, for a total of 45 percent, calculation based on the net including the gratuity, but excluding any alcohol. After noting that Defendants kept no business records and ran their business in cash, the trial court concluded that Defendants owed Castaneda \$48,246.19 and that they

had previously paid her \$23,000, with the difference of \$25,246.29 owed to Castaneda (the court made a \$.10 math error in the calculation). However, since Castaneda only sought \$24,890, the court awarded her that sum, based on her services up to September 3.

The trial court also noted that Castaneda rendered services prior to September 3 for events occurring after that date, finding that the total was \$86,344 and that Castaneda was entitled to 10 percent of that figure for her services or \$8,634, with total damages amounting to \$33,524. Thereafter, Defendants made an oral request for findings of fact and conclusions of law, with the trial court replying: "I think I just gave you each of the findings and the conclusions." The trial court entered a judgment in Castaneda's favor and Defendants timely appealed.

DISCUSSION

I. *Statement of Decision*

Defendants contend the trial court committed reversible error by refusing to issue a statement of decision. This contention fails.

"The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision." (Code Civ. Proc., § 632.) Thus, a trial court may make findings on only those issues specified (*Harvard Investment Co. v. Gap Stores, Inc.* (1984) 156 Cal.App.3d 704, 709-710, fn. 3); absent such a specification, a party is deemed to have waived the right to object to the trial court's failure to do so (*City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1292-1293). Additionally, where, as here, a trial lasts for more than one day, a

party has ten days after the court announces its tentative decision to request a statement of decision. (Code Civ. Proc., § 632.)

Here, immediately after the trial court verbally announced its decision, Defendants requested "findings of fact and conclusions of law," but failed to specify any controverted issues to be addressed by a statement of decision. Although Defendants had ten days to correct the defect, they failed to do so. Under these circumstances, they have waived any objection to the trial court's denial of their oral request.

In any event, Defendants have failed to show they were prejudiced by the trial court's failure to issue a written statement of decision. They claim that the trial court's verbal decision was inconsistent with the evidence and had it taken the time to issue a written statement of decision, these errors would not have occurred. This argument misconstrues the purpose of a statement of decision.

A statement of decision must explain the factual and legal basis for the court's decision regarding the principal controverted issues at trial (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 599); it does not need to specify the particular evidence considered by the trial court in reaching its decision (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1125). Additionally, a statement of decision need only state ultimate rather than evidentiary facts "because findings of ultimate facts necessarily include findings on all intermediate evidentiary facts necessary to sustain them." (*In re Cheryl E.*, *supra*, 161 Cal.App.3d at p. 599.)

Defendants are not complaining about omitted findings on principal controverted issues at trial; rather, they are complaining that the trial court erred in its findings. Here,

the trial court concluded that a contract existed and determined the terms of the contract and the damages to be awarded based on the evidence presented. The court's verbal statement adequately disposed of all the basic issues in the case; accordingly, we reject Defendants' claim of error.

II. *Legal Principles Regarding Contract Damages*

The general measure of damages for a breach of contract "is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom." (Civ. Code, § 3300.) Although damages for breach of contract must be clearly ascertainable as to their nature and origin (Civ. Code, § 3301), the party breaching the contract bears the risk as to any uncertainty or difficulty in computing the amount of damages. (*Steelduct Co. v. Henger-Seltzer Co.* (1945) 26 Cal.2d 634, 651.)

"Where the *fact* of damages is certain, the amount of damages need not be calculated with absolute certainty. [Citations.] The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation." (*GHK Associates v. Mayer Group, Inc.* (1990) 224 Cal.App.3d 856, 873, italics in original). The selection of which measure of damages to apply is within the sound discretion of the trier of fact. (*Id* at p. 874.)

The amount of damages awardable is a question of fact for the trier of fact. (*Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 506-507.) We therefore review the court's order on damages under the substantial evidence standard. We presume that the trial court made all findings necessary to support the judgment (*Michael*

U. v. Jamie B. (1985) 39 Cal.3d 787, 792-793, superseded by statute on another ground as noted in *In re Zacharia D.* (1993) 6 Cal.4th 435, 448) and reverse its findings only if they are unsupported by substantial evidence. (*Watson v. Department of Rehabilitation* (1989) 212 Cal.App.3d 1271, 1289.)

As the trier of fact, the trial court had the duty to weigh and interpret the evidence and draw inferences therefrom; we cannot reweigh the evidence or draw contrary inferences. (*In re Cheryl E., supra*, 161 Cal.App.3d at p. 598.) We "consider the evidence in the light most favorable to the prevailing party, giving that party the benefit of every reasonable inference and resolving conflicts in support of the judgment. [Citation.]" (*Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 561.) Evidence accepted by the trial court as true may not be rejected by the appellate court unless it is physically impossible or its falsity is obvious without resort to inference or deduction. (*Watson v. Department of Rehabilitation, supra*, 212 Cal.App.3d at p. 1293.)

III. Analysis

Defendants impliedly concede the propriety of the trial court's findings regarding the terms of the oral contract and breach; thus, we do not discuss these findings. They claim that the trial court erroneously awarded Castaneda 45 percent of the total price for events held before she left as damages because the undisputed evidence shows Castaneda did not provide all services for all events. They also contend that the trial court erroneously included the gratuity in its calculations. As to events Castaneda booked that took place after she left, Defendants claim that the damages award cannot be upheld

because Castaneda speculated as to what events actually occurred. They also claim that Castaneda was not entitled to the full 10 percent for her services because she did not manage these events. We address these contentions in turn.

A. Damages for Events Castaneda Held

The trial court calculated damages for events Castaneda managed, but was not fully paid, by first determining what amount Defendants had paid. It noted that Castaneda claimed to have been paid \$23,000 in an earlier prepared declaration and \$21,481.19 in an exhibit prepared for trial, and accepted the higher figure. The court then added together the contract amounts listed on the exhibit, which came to \$48,246.19, subtracted the amount previously paid and determined that Defendants owed Castaneda \$25,246.29. Castaneda, however, only asked for \$24,890 and the court awarded her that sum based on her services up to September 3.

Defendants first assert the trial court erred when it included in the net for each event the amount set for the gratuity to the wait staff because Castaneda testified that gratuity was not to be included in the percentage she was owed. Castaneda, however, testified that she included gratuity to the wait staff in her calculations, but that the money ultimately went to the wait staff because Java Café paid the wait staff and included the gratuity in its payroll to them. Nowar confirmed that Defendants never paid the wait staff any gratuity out of the money they received from clients, but when asked whether Castaneda paid the wait staff their gratuity, Nowar claimed he was "confused" about that. Based on this testimony, the court reasonably concluded that Castaneda properly included

the gratuity in her calculations because this money ultimately went to the wait staff when Java Café paid them.

Defendants next assert that Castaneda is not entitled to a full 45 percent on all events held before she left in September because her own testimony shows that she did not provide food or linens for certain events. Specifically, Defendants cite Castaneda's testimony that she provided no food for the events on April 2 and 8, May 29 and August 6.

In calculating damages the trial court relied on an exhibit which was identified for the record, but never received into evidence. Castaneda testified that the figures and names on the exhibit came from customer contracts and that the number listed was the net for each contract minus sales tax for each month at both locations. She also testified that she totaled the events where she did not provide the food. This exhibit, combined with Castaneda's testimony and the handwritten invoices constituted sufficient evidence from which the trial court could calculate damages.

Taking into account that Castaneda was only entitled to 30 percent for those events where she did not provide the food and nothing for the event held on April 9 and the cancelled May 28 event, we reviewed the handwritten invoices and Castaneda's testimony. Like the trial court, we calculated a damage award *higher* than that actually requested by Castaneda. Had Defendants kept records of what each client actually paid, the task of calculating damages would have been a simple matter. They did not and cannot now complain about the court's reliance on the handwritten invoices to calculate

damages. We find the evidence competent and sufficient to support this portion of the judgment.

B. Damages for Events Castaneda Booked

The trial court concluded that Defendants held events after September 3 that Castaneda had booked totaling \$86,344 and that Castaneda was entitled to 10 percent of that figure (\$8,634) for her services. Defendants assert the trial court erred because Castaneda speculated as to what events actually took place. They also argue that she was not entitled to the full 10 percent for her services because she merely booked the events and did not manage them.

We reject Defendants' assertion that the trial court erred in awarding Castaneda the full 10 percent of net for the events they held after September 3. Defendants breached the contract by failing to pay Castaneda and they cannot reasonably argue that Castaneda should have managed the events she had booked despite this material breach. Where, as here, a party has been injured by a breach of contract, she can treat the contract as repudiated by the other party and recover damages to which she would have been entitled had the other party not breached the contract or prevented her performance. (*Akin v. Certain Underwriters at Lloyd's London* (2006) 140 Cal.App.4th 291, 296.) Accordingly, the trial court reasonably concluded that Castaneda should receive the full 10 percent for the events she booked, but was prevented from managing.

The evidence presented at trial also supported the 10 percent damage award. Castaneda's counsel argued that Castaneda booked \$86,344 worth of business at both

locations. The trial court came up with a larger number, but accepted counsel's number and awarded Castaneda 10 percent or \$8,634.

Castaneda claimed to have booked 19 events at Roman Village and Roman Palace to take place after September 3 and she presented a number of written contracts for both locations. The evidence, however, is conflicting as to whether all of the events she booked actually took place. Castaneda admitted "guessing" as to whether some events occurred, but testified that many customers called her to confirm that their events were going forward when they learned that she would not be managing the event and she assumed that these events actually occurred. However, Castaneda's mother and manager of the Java Café testified that *all* the post-September 3 events took place at both locations.

In contrast, Defendants had no records to support their argument that the events Castaneda booked did not occur; rather, they relied on Nowar's recollection. Nowar was able to confirm that 11 of the booked events at Roman Village occurred and three of the booked events at Roman Palace occurred.

As noted by the trial court, Defendants failed to keep records; accordingly, their conduct made it difficult for them to controvert Castaneda's evidence of her damages and they cannot complain that the trial court estimated the damages based on the other evidence presented. (*Xum Speegle, Inc. v. Fields* (1963) 216 Cal.App.2d 546, 556.) Castaneda indicated that the net amount for all contacts that she booked, but occurred after, September 3 amounted to \$109,000 and she requested 19 percent of this net amount. Based on the testimony of Castaneda's mother, the trial court could have

accepted this total and awarded Castaneda 10 percent or \$10,900. During closing argument, however, counsel conceded that Castaneda could not prove that certain events took place and argued the correct amount owed was \$86,344. The trial court accepted Castaneda's concession and awarded her 10 percent of that figure. We again find the evidence competent and sufficient to support the judgment.

DISPOSITION

The judgment is affirmed. Respondent is awarded her costs on appeal.

McINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.